

Key Points:

- Last year, the DEIS showed aquatic resources in the Bay Delta Estuary in a downward trend. The BDCP proposed 2 coequal goals of water supply reliability and improving the Delta ecosystem via tunnels and large-scale restoration. Therefore, it was appropriate for us to comment on activities contributing to the decline of the Delta.
- The SDEIS still shows a Bay Delta Estuary in a downward trend. The federal action is no longer a proposal of restoration, and is solely a proposal of constructing and operating new tunnels and intakes. The “purpose and need” for the project is still somewhat muddled, but appears to be primarily for improving the long-term stability of transporting water to the water users.
- Under the former DEIS, the lead agencies included USFWS and NMFS as well as BOR. Under the new CA Waterfix, BOR is the sole lead agency.
- DOI leadership supports the new project as they believe the project solves the problem of entrainment (fish getting trapped in the pumping facilities). It is unclear at this point how NMFS views the project. NMFS and USFWS have largely exited the NEPA process to concentrate on issuing a Section 7 Incidental Take Permit to BOR. Therefore, it is likely that EPA’s comments on the SDEIS will be “out front” on the impacts to fish.
- EPA supports the concept of “a” new conveyance facility IF it is (a) the right size, (b) the right place, and utilizes (c) the right operational parameters that increase Delta outflow.
- We still have remaining water quality, aquatic life, and NEPA adequacy concerns.
- Our NEPA letter will be advisory, but will precede a number of other critical decisions including, the USFWS and NMFS biological opinion, the State Water Board standard setting process, and the Army Corps permit decisions. Therefore, our comments may be influential to these regulatory processes.
- (b)(5)(Deliberative) [REDACTED]

I. **Remaining Environmental Issues:**

A. Water Quality

1. Increased salinity in Western Delta; will make more difficult to meet WQS, esp. during drought
2. Increased exceedances of the aquatic life EC standard at Prisoners Point
3. May affect hundreds of acres of wetlands and mitigation is not defined
4. Increases selenium exposure

B. Fisheries/Beneficial Use protection

1. Entrainment of most fish species into the CVP/SWP facilities will be reduced.
2. Quantity and quality of aquatic habitat reduced for most fish species relative to today’s conditions.
3. Quantity and quality of aquatic habitat potentially reduced for a few fish species relative to the future, degraded baseline.

C. NEPA Analysis

1. Relies on uncertain, severely degraded future baseline; demonstrates that the project will make conditions unchanged or only slightly “less bad”
2. Modeling was not based on the proposed project or the baselines
3. No analysis of impacts on X2 ecosystem indicator
4. Project operations are still undefined pending Section 7 consultations.

II. Policy Decisions Influencing Rating

- A. The SDEIS disregards best available science that recommends increasing Delta outflow to improve conditions for aquatic life. The state does not propose to increase outflow.
- B. Further degrades the Delta aquatic ecosystem, resident and migratory fish habitat, and water quality, compared to current conditions.
- C. The threshold for non-adverse effects in the SDEIS is much lower than federal and State goals to improve ecosystem conditions for aquatic life.
- D. Maintains high water supply exports south of Delta; Shifts burden of climate change impacts (more rain, less snow) away from water supply for consumptive uses onto water quality and aquatic life.
- E. Project was not modeled as defined.

III. Related Future Actions:

- A. A State Water Board water rights permit modification and 401 Water Quality Certification will be required for a change in point of diversion.
- B. Corps 404 and 408 permits will be required for dredged or fill material and modification of levees.
- C. USFWS and NMFS Section 7 Incidental Take Permits will be required for operations and construction of new facilities